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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. [redacted] 61

OKLAHOMA PRESS PUBLISHING COMPANY,

Petitioner,

vs.

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Oklahoma Press Publishing Company respectfully petitions for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit to review a decree of said court entered on February 15, 1945 (R. 71), enforcing an order of the District Court for the Eastern District of Oklahoma entered June 12, 1944, in a proceeding brought by the Administrator of the Wage and Hour Division, United States Department of Labor, to enforce an alleged subpoena duces tecum issued by the Administrator in pursuance of Section 9 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U. S. C. 201 *et seq.*).

The opinion of the District Court (R. 53-56) and of the Circuit Court of Appeals (R. 63-71) are as yet unreported.

A

Statement of the Matter Involved

Petitioner is engaged at Muskogee, Oklahoma, in the business of publishing two daily newspapers—the Muskogee Daily Phoenix which is published each morning and the Muskogee Times-Democrat which is published each evening except Sundays (R. 54). The total net paid circulation of the Muskogee Daily Phoenix as of September, 1943, was 12,172 (R. 44, 54). The total net paid circulation of the Muskogee Times-Democrat as of the same date was 9,491. Since June 1, 1939, no papers have been sold by petitioner outside the state of Oklahoma (R. 44, 54). Petitioner mails daily, without charge, to Muskogee residents now in the armed forces approximately 17 copies of the Muskogee Times-Democrat and 120 copies of the Muskogee Daily Phoenix (R. 20, 42, 45-46, 54). Petitioner also mails, without charge, approximately 67 copies to its out of state representative for advertisers (R. 20, 42-43, 46, 54-55).

On June 3 and 4, 1943, one Erle P. Bryan, representing himself to be a duly authorized representative of the Administrator of the Wage and Hour Division, appeared at petitioner's office and sought to make an inspection of petitioner's books and records. Petitioner refused to permit any such search (R. 10, 20-21).

On November 3, 1943, a duplicate original of a paper purporting to be a subpoena duces tecum signed by L. Metcalfe Walling, Administrator of the Wage and Hour Division, requiring petitioner to appear before officers of the Wage and Hour Division on November 17, 1943, to produce certain requested material was served upon one Franklin E. Katterjohn (R. 7, 21). Said Katterjohn was not and never has been a stockholder, director or officer of petitioner and has no control over the books, records and documents de-

scribed in said purported subpoena duces tecum (R. 21-22). No one representing petitioner answered the purported subpoena duces tecum (R. 13-14).

L. Metcalfe Walling then made application to the District Court for the Eastern District of Oklahoma on January 29, 1944, for an order of enforcement of the aforesaid subpoena (R. 5-9).

Upon an ex parte showing the District Court issued an order directing petitioner to show cause on February 18, 1944, why an order should not issue requiring it to comply with the aforesaid subpoena (R. 14-15.) Time for filing an answer was extended to March 9, 1944.

In its return to the order to show cause and answer to the petition of the Administrator for enforcement of the purported subpoena petitioner denied essential jurisdictional facts, namely, that the Act is applicable to the business of petitioner; that the Administrator has jurisdiction over petitioner's affairs; and that the court had jurisdiction in the premises (R. 16-17). Petitioner also asserted as defenses that the attempted application of the Act to its business violated its rights as guaranteed by the First, Fourth and Fifth Amendments to the Constitution of the United States (R. 16-17).

The case was heard on March 9, 1944, by Judge Eugene Rice (R. 49-50). The District Court held that the order to show cause was properly issued and that petitioner was subject to the provisions of the Fair Labor Standards Act. On June 12, 1944, it entered an order requiring petitioner to give the Administrator access to the books and records prayed for in the subpoena (R. 56-57).

Petitioner appealed to the United States Circuit Court of Appeals for the Tenth Circuit. Argument on its appeals was heard on November 15, 1944, in Wichita, Kansas. On February 15, 1945, the Circuit Court affirmed the judgment of the District Court.

B

Jurisdiction

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 938; 28 U.S.C., Sec. 347(a)). The decree of the United States Circuit Court of Appeals to be reviewed was entered on February 15, 1945 (R. 71).

C

Constitutional and Statutory Provisions Involved

The constitutional provisions involved are Article I, Section 8, Clause 3 and the First, Fourth and Fifth Amendments to the Constitution of the United States. These provisions are set forth in the Appendix at page 17.

The statutory provisions are those embraced in the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. Sec. 201 *et seq.*) and Sections 9 and 10 of the Federal Trade Commission Act (38 Stat. 722, 15 U. S. C. Sec. 41 *et seq.*). These provisions are set forth in the Appendix at page 18.

D

Questions Presented

1. Whether in a proceeding instituted for the purpose of compelling compliance with the commands of a subpoena duces tecum, the respondent therein in response to an order to show cause is barred from making the defense that it is not subject to the Act involved.

2. Whether, in light of the record before it, the Circuit Court of Appeals erred in failing to pass upon the merits of the case.

3. Whether Congress, in the light of the prohibition of the First Amendment against the abridgment of the free-

dom of the press by any form of restraint whatsoever, has the power to apply the Act to the newspaper publishing business of petitioner.

E.

Reasons Relied On for the Allowance of the Writ

1. The holding that the Administrator is entitled to an order enforcing an investigatory subpoena without a judicial adjudication that the industry sought to be investigated is subject to the Act is in conflict with the decision of the United States Circuit Court of Appeals for the Sixth Circuit in General Tobacco & Grocery Co. v. Fleming, 125 F. 2d 596 (1942).

The decision of the Tenth Circuit Court of Appeals in this case is in conflict with the holding of the Sixth Circuit Court of Appeals in the *General Tobacco* case that the Administrator is not entitled to an order enforcing a subpoena duces tecum without a determination that the industry sought to be investigated is covered by the Act. There is conflict among other Circuit Courts of Appeals on this question and on the effect of this Court's decision in *Endicott Johnson Corp.* v. *Perkins*, 317 U. S. 501 (1943), on cases arising under the Fair Labor Standards Act. This question is an important one in the administration of the Act and should be decided by this Court.

2. The refusal of the Circuit Court of Appeals, in the light of the record before it, to pass on the merits of the case was arbitrary and capricious and should be reviewed by this Court.

The record in this case shows that the case was tried in the District Court on admissions and uncontradicted affidavits and that the District Court passed upon the question of coverage. The refusal of the Circuit Court to pass upon the merits of the case which were presented to it on appeal was arbitrary and capricious and should be reviewed by this Court.

3. The holding of the Circuit Court of Appeals that the application of the Act to the newspaper publishing business does not violate the constitutional guaranty of a free press is in conflict with the decision of this Court in Murdock v. Pennsylvania, 319 U. S. 105 (1943), and other cases.

The holding of the Circuit Court of Appeals that a newspaper has no special immunity from the application of general laws is in conflict with the decision of this Court in *Murdock v. Pensylvania, supra.* The application of this Act to newspapers would restrict circulation, and under decisions of this Court, restriction on circulation violates the free press guaranty. Further, the court below overlooked the fact that in enacting the Fair Labor Standards Act Congress did not treat all newspapers alike but attempted for purposes of regulation to classify the press on the basis of volume of circulation, frequency of issue and area of distribution in violation of the guaranties of the First and Fifth Amendments.

WHEREFORE, your petitioner prays that a writ of certiorari be issued under the seal of this Court, directed to the United States Court of Appea for the Tenth Circuit, to the end that this cause may be reviewed and determined by this Court; that the decree of the said Court of Appeals be reversed by this Court; and for such other and further relief as to this Court may seem proper.

Respectfully submitted,

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Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Preliminary Statement

The opinions below, the statement of the matter involved, jurisdiction, and the questions presented appear in the Petition for a Writ of Certiorari herein and in the interest of brevity are incorporated here by reference.

II

Summary of Argument

Point 1. The holding of the Circuit Court of Appeals that the Administrator is entitled to an order enforcing an

investigatory subpoena without a judicial determination that the industry sought to be covered is subject to the Act is in conflict with the decision of the United States Circuit Court of Appeals for the Sixth Circuit in *General Tobacco & Grocery Co.* v. *Fleming*, 125 F. 2d 596 (1942). There is also conflict among the Circuit Courts of Appeals on the effect of this Court's decision in *Endicott Johnson Corp.* v. *Perkins*, 317 U. S. 501 (1943), on the question of enforcing a subpoena without proof of coverage under the Fair Labor Standards Act. If the decision in the *General Tobacco* case is not sustained and a citizen is not allowed to test coverage under the Act before complying with a subpoena, a citizen may be subjected to unauthorized inspections in violation of rights guaranteed by the Fourth Amendment. A final determination of the question whether coverage under the Act may be tested in a hearing on an order to show cause is necessary both to insure uniform administration of the Act and to protect the constitutional rights of citizens.

Point 2. The record in this case shows that all of the facts necessary for a decision on the merits were before the court below. The District Court decided the question of coverage, and, on appeal, the Circuit Court of Appeals was urged to pass on this question. Its refusal to do so was arbitrary and capricious and will subject petitioner to unnecessary litigation.

Point 3. The holding of the Circuit Court of Appeals that the application of the Act to the newspaper publishing business does not violate the constitutional guaranty of freedom of the press is in conflict with decisions of this Court in *Murdock* v. *Pennsylvania*, 319 U. S. 105 (1943), and other cases. Application of this Act to newspapers would violate the First Amendment both by restricting circulation and by permitting Congress to regulate the press by classifying it.

III

Argument

POINT 1

The holding of the Circuit Court of Appeals that the Administrator is entitled to an order enforcing an investigatory subpoena without a judicial adjudication that the industry sought to be investigated is subject to the Act is in conflict with the decision of the United States Circuit Court of Appeals for the Sixth Circuit in General Tobacco & Grocery Co. v. Fleming, supra.

Section 11 (a) of the Act authorizes the Administrator to make investigations "in any industry subject to this Act" and Section 11 (c) requires that "every employer subject to any provision of this Act" shall make and keep certain records. The Administrator, purporting to act under authority conferred by this statute, issued an alleged subpoena duces tecum in an attempt to inspect petitioner's books and records without making any formal determination or showing that petitioner's business is an "industry subject to this Act" or that petitioner is an employer "subject to any provisions of this Act" (R. 33).

Petitioner refused to obey the alleged subpoena duces tecum on the ground that since neither it nor its employees were subject to the Act the Administrator was without authority to inspect its books and records. In its return and answer to the order to show cause in the District Court petitioner denied: that the Act is applicable to the business of petitioner; that the Administrator has jurisdiction over petitioner's affairs; and that the District Court had jurisdiction in the premises. It also alleged that the attempted application of the Act to its business violates its rights as guaranteed by the First, Fourth and Fifth Amendments to the Constitution (R. 16-17). Petitioner contended that these denials and allegations tendered issues of fact and law which the District Court was under a duty to determine at the outset of the proceedings. The District Court held

that petitioner was subject to the Act and ordered it to comply with the subpoena.

On appeal to the Circuit Court of Appeals, petitioner again contended that it was the duty of the court to pass upon the question of coverage before ordering compliance with the subpoena. Petitioner argued that a hearing on an order to show cause is only an empty form if at that time the respondent is not permitted to make any defense as to compliance with the Act or as to coverage. If a citizen is not permitted to try the issue of coverage at the time the Administrator seeks to inspect his business, he will have no way to prevent repeated inspections even though his business may not be subject to the Act. No lawful purpose could be served by permitting an unauthorized inspection. Therefore, the courts, the only forum in which coverage under the Act can be decided, should determine the question of coverage at the outset of the proceeding. It is axiomatic that the time to stop the trespasser is at the threshold.

The Circuit Court held, on authority of *Walling* v. *Benson*, 137 F. 2d 501 (1943), that petitioner was not entitled to an adjudication of actual coverage and that it was only necessary that the District Court should have assurance "reasonable grounds exist for making the investigation." The court also held that the Administrator's allegations on information and belief that petitioner was subject to the Act constituted reasonable grounds although petitioner had offered uncontradicted affidavits to show that it was not subject to the Act.

This decision is in conflict with the decision of the Circuit Court of Appeals for the Sixth Circuit in *General Tobacco & Grocery Co.* v. *Fleming, supra.* In that case which arose under the same provisions of the Act as the controversy herein, the court held that where the answer of the respondent tenders an issue of fact on the jurisdictional question of interstate commerce the Administrator must show that

the respondent is engaged in interstate commerce or in the production of goods for commerce. The court said:

> "* * * It is unreasonable to assume that Congress intended that one who, when called upon to produce his books and records, denies that he is engaged in transactions within the purview of the Act should be refused a hearing upon that issue before his privacy is invaded in derogation of his individual immunity from unreasonable search of his papers and effects." (125 F. 2d at p. 599.)

It is submitted that the more recent decision of the Sixth Circuit Court of Appeals in *Walling* v. *LaBelle Steamship Co.*, 8 Wage and Hour Reporter 353, in no sense overrules its prior decision in the *General Tobacco Co.* case. In the *LaBelle Steamship Co.* case, respondent, admittedly engaged in interstate commerce, resisted an attempted investigation by the Administrator on the ground that its employees were exempt from the Act as seamen. The court, in holding that respondent was not entitled to have the issue of its individual employees tried in this proceeding, distinguished the case from the *General Tobacco Co.* case in which the employer denied that it was engaged in commerce or in the production of goods for commerce. Cases such as the *General Tobacco Co.* case and the present case, in which petitioner denied that it was engaged in commerce or in the production of goods for commerce and that it was subject to the Act, are clearly distinguishable from cases in which part of a business is subject to the Act and only certain employees are exempt from its provisions.

Furthermore, since the decision of the Tenth Circuit in the present case was announced, the Circuit Court of Appeals for the Third Circuit, in a decision announced March 5, 1945, divided two to one in a similar controversy, *Walling* v. *News Printing Co.*, 8 Wage and Hour Reporter 270. The majority of the court held that the Administrator's allega-

tions, on information and belief, that respondent was engaged in interstate commerce within the meaning of the Act and that he had reason to believe respondent was violating the Act, constituted a showing sufficient to entitle him to an order enforcing his subpoena. Judge McLaughlin, however, in a dissenting opinion, stated that the Act imposes on the district court, *at the very least*, the duty of satisfying itself that the Administrator has reasonable ground for believing respondent is subject to the Act and that mere assertions on information and belief do not constitute a showing. (Emphasis supplied.)

There is also conflict among the Circuit Courts of Appeals on the effect of this Court's decision in *Endicott Johnson Corp.* v. *Perkins, supra*, on the question of enforcing a subpoena without proof of coverage under the Fair Labor Standards Act. The First Circuit in *Martin Typewriter Co.* v. *Walling*, 135 F. 2d 918 (1943), and the Second Circuit in *Walling* v. *Standard Dredging Corp.*, 132 F. 2d 322 (1943), affirmed judgments enforcing subpoenas without proof of coverage on the authority of the *Endicott Johnson* case. Both of these opinions, however, were per curiam and do not indicate to what extent, if any, these circuit courts had in view the differences between the Walsh-Healey Act and the Fair Labor Standards Act. The Eighth Circuit in *Walling* v. *Benson, supra*, stated that this Court's opinion in the *Endicott Johnson* case was confined solely to an interpretation of the Walsh-Healey Act. The Tenth Circuit in the present case distinguished the two acts and held that the *Endicott Johnson* case was not "authority for the contention of the Administrator to the effect that the courts are deprived of the power of discretion in the performance of the judicial function committed to them" by the Fair Labor Standards Act. The Sixth Circuit in *Walling* v. *LaBelle Steamship Co., supra*, has adopted this interpretation of the case. The Third Circuit, in *Walling* v.

News Printing Co., supra, held the *Endicott Johnson* case was "persuasive" in determining the issues before it, but Judge McLaughlin, in his dissent, held that the opinion in that case was confined solely to an interpretation of the Walsh-Healey Act.

A final determination of this question is necessary in order to secure a uniform administration of the Act and to preserve the rights guaranteed by the Fourth Amendment. This Court should grant certiorari in the present case and resolve the conflict now existing between the Circuit Courts of Appeals on this question.

POINT 2

The refusal of the Circuit Court of Appeals, in the light of the record before it, to pass upon the merits of the case was arbitrary and capricious and should be reviewed by this Court.

The record in this case shows that the cause was tried in the District Court upon admissions and upon uncontradicted affidavits and that all the facts necessary for a decision on the merits were before the court. The District Court in its finding of fact No. 6 (R. 55) said:

> "The affidavits of the Respective parties are hereby made a part of the findings of fact by reference. It has been the purpose of the court to include in this statement the essential facts for decision herein. If any fact contained in the affidavits has been omitted it is hereby incorporated herein by reference and made a part hereof."

The District Court passed upon the question of coverage and held that petitioner was subject to the Act and therefore must comply with the demands of the subpoena.

On appeal, the question of coverage was presented to the Circuit Court in the briefs of both petitioner and respondent and on oral argument. Although the Circuit Court was urged to decide the question of coverage, it refused to pass

on this question and stated that "It is time enough to consider that question when all the evidence sought to be produced by the subpoena is before the court in a proceeding directly involving violations based on coverage" (R. 71).

As petitioner has pointed out, the Circuit Court's refusal to pass upon the question of coverage may subject a citizen to repeated inspections by the Administrator even though his business is not subject to the Act. If upheld, the court's decision to try the issue of coverage only in a "proceeding directly involving violations" will force a citizen harassed by inspectors to violate the law deliberately in order to have the question of coverage determined. In the event that the Administrator ignored a single or infrequent deliberate violation the citizen would have to adopt deliberately a course of repeated violations to obtain access to a forum in which his rights could be determined. Surely Congress never intended that a citizen would have to violate the law deliberately in order to secure for himself the rights guaranteed by the Federal Constitution.

In the light of the record before it, the refusal of the Circuit Court to pass upon the question of coverage and its decision to subject the petitioner to further and needless litigation was arbitrary and capricious and should be reviewed by this Court.

POINT 3

The holding of the Circuit Court of Appeals that the application of the Act to the newspaper publishing business does not violate the constitutional guaranty of a free press is in conflict with the decisions of this Court in Murdock v. Pennsylvania, supra, and other cases.

The Circuit Court of Appeals stated that the publisher of a newspaper has no special immunity from the application of general laws, including the Fair Labor Standards Act, and that the uniform regulations imposed by the Act are not an abridgment of freedom of the press. This statement

is in direct conflict with the holding of this Court in *Murdock* v. *Pennsylvania, supra,* that even a general law applying to all persons alike if it lays a direct burden on the business of the press must be nullified as to the press by reason on the prohibition against restraint contained in the First Amendment.

This Act lays a direct burden on the press. The business of preparing and publishing a daily newspaper is peculiar in that it demands a high degree of flexibility in operation (R. 29-30). If a publisher is limited in his operations by the application of the burdens of this Act, he will be unable to serve his readers adequately.

Newspapers which are unable to operate successfully under this Act will be forced to restrict circulation. Petitioner here sought to remove itself from the possible application of this law by eliminating its out of state subscribers. If it is held that the Act can now be applied to petitioner, petitioner will be compelled to discontinue its practice of sending free copies to Muskogee residents who are now serving in their country's armed forces. Restriction of circulation violates the guaranty of the First Amendment. *Lovell* v. *Griffin,* 303 U. S. 444 (1938); *Schneider* v. *State,* 308 U. S. 147 (1939); *Near* v. *Minnesota,* 283 U. S. 697 (1931); and *Grosjean* v. *American Press Co.,* 297 U. S. 233 (1936).

Furthermore, the court below overlooked the fact that an analysis of Section 13 (a) (8) shows that Congress classified the press for the purposes of regulation provided in this Act on the basis of volume of circulation, frequency of issue and area of distribution. Thus, the Act regulates the press by classifying it. If Congress has the power to classify the press as it has done here, it can exercise that power so as to benefit or burden any particular portion of the press it so desires. The First Amendment prohibits the exercise of this power by Congress.

The holding of the Circuit Court of Appeals in is conflict with decisions of this Court under the First Amendment and should be reviewed by this Court.

IV

Conclusion

It is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

Constitutional Provisions Involved

The constitutional provisions involved are Article I, Section 8 of the Constitution of the United States and the First, Fourth and Fifth Amendments to the Constitution of the United States.

Article I, Section 8 of the Constitution of the United States provides that:

"The Congress shall have Power * * * To regulate Commerce * * * among the several States * * *."

The First Amendment to the Constitution of the United States provides that:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fourth Amendment to the Constitution of the United States provides that:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Amendment to the Constitution of the United States provides that:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case

to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Statutory Provisions Involved

The statutory provisions involved are those embraced in the Fair Labor Standards Act of 1938 (52 Stat. 1060; 29 U. S. C., Sec. 201 *et seq.*) and in Sections 9 and 10 of the Federal Trade Commission Act (38 Stat. 722; 15 U. S. C., Sec. 41 *et seq.*)

A copy of the Fair Labor Standards Act is bound in as a part of this Appendix beginning at page 23.

Sections 9 and 10 of the Federal Trade Commission Act provide that:

"Sec. 9. For the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

"Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

"Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the

commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of the Act or any order of the commission made in pursuance thereof.

"The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

"Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

"No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be

exempt from prosecution and punishment for perjury committed in so testifying.

"Sec. 10. Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

"Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

"If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the

Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

"Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court."

[PUBLIC—NO. 718—75TH CONGRESS]
[CHAPTER 676—3D SESSION]
[S. 2475]

AN ACT

To provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Act of 1938".

FINDING AND DECLARATION OF POLICY

SEC. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof.

(c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(e) "Employee" includes any individual employed by an employer.

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying,

the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15 (g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

(h) "Industry" means a trade, business, industry, or branch thereof, or group of industries, in which individuals are gainfully employed.

(i) "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State.

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(l) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Chief of the Children's Bureau in the Department of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Chief of the Children's Bureau certifying that such person is above the oppressive child-labor age. The Chief of the Children's Bureau shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Chief of the Children's Bureau determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodg-

ing, or other facilities are customarily furnished by such employer to his employees.

ADMINISTRATOR

SEC. 4. (a) There is hereby created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in this Act referred to as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of $10,000 a year.

(b) The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary to carry out his functions and duties under this Act and shall fix their compensation in accordance with the Classification Act of 1923, as amended. The Administrator may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Administrator, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(c) The principal office of the Administrator shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

(d) The Administrator shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this Act as he may find advisable.

INDUSTRY COMMITTEES

SEC. 5. (a) The Administrator shall as soon as practicable appoint an industry committee for each industry engaged in commerce or in the production of goods for commerce.

(b) An industry committee shall be appointed by the Administrator without regard to any other provisions of law regarding the appointment and compensation of employees of the United States. It shall include a number of disinterested persons representing the public, one of whom the Administrator shall designate as chairman, a like number of persons representing employees in the industry, and a like number representing employers in the industry. In the appointment of the persons representing each group, the Administrator shall give due regard to the geographical regions in which the industry is carried on.

(c) Two-thirds of the members of an industry committee shall constitute a quorum, and the decision of the committee shall require a vote of not less than a majority of all its members. Members of an industry committee shall receive as compensation for their services a reasonable per diem, which the Administrator shall by rules and regulations prescribe, for each day actually spent in the work of the committee,

and shall in addition be reimbursed for their necessary traveling and other expenses. The Administrator shall furnish the committee with adequate legal, stenographic, clerical, and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

(d) The Administrator shall submit to an industry committee from time to time such data as he may have available on the matters referred to it, and shall cause to be brought before it in connection with such matters any witnesses whom he deems material. An industry committee may summon other witnesses or call upon the Administrator to furnish additional information to aid it in its deliberations.

(e) No industry committee appointed under subsection (a) of this section shall have any power to recommend the minimum rate or rates of wages to be paid under section 6 to any employees in Puerto Rico or in the Virgin Islands. Notwithstanding any other provision of this Act, the Administrator may appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to all employees in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce, or the Administrator may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under section 6 to employees therein engaged in commerce or in the production of goods for commerce in particular industries. An industry committee appointed under this subsection shall be composed of residents of such island or islands where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of Puerto Rico and the Virgin Islands. In determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees and the Administrator shall be subject to the provisions of section 8 and no such committee shall recommend, nor shall the Administrator approve, a minimum wage rate which will give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands.

No wage orders issued by the Administrator pursuant to the recommendations of an industry committee made prior to the enactment of this joint resolution pursuant to section 8 of the Fair Labor Standards Act of 1938 shall after such enactment be applicable with respect to any employees engaged in commerce or in the production of goods for commerce in Puerto Rico or the Virgin Islands.[1]

MINIMUM WAGES

SEC. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—

(1) during the first year from the effective date of this section, not less than 25 cents an hour,

(2) during the next six years from such date, not less than 30 cents an hour,

[1] Amendment provided by Act of June 26, 1940 (Public Res. No. 88, 76th Congress).

(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 8, whichever is lower, and

(4) at any time after the effective date of this section, not less than the rate (not in excess of 40 cents an hour) prescribed in the applicable order of the Administrator issued under section 8,

(5) if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Administrator, or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers.[1]

(b) This section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of this Act.

(c) The provisions of paragraphs (1), (2), and (3) of subsection (a) of this section shall be superseded in the case of any employee in Puerto Rico or the Virgin Islands engaged in commerce or in the production of goods for commerce only for so long as and insofar as such employee is covered by a wage order issued by the Administrator pursuant to the recommendations of a special industry committee appointed pursuant to section 5 (e).[1]

MAXIMUM HOURS

SEC. 7. (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

[1] Amendment provided by Act of June 26, 1940 (Public Res. No. 88, 76th Congress).

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand hours during any period of twenty-six consecutive weeks,

(2) on an annual basis in pursuance of an agreement with his employer, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that the employee shall not be employed more than two thousand hours during any period of fifty-two consecutive weeks, or

(3) for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year in an industry found by the Administrator to be of a seasonal nature,

and if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(c) In the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugar beet molasses, sugarcane, or maple sap, into sugar (but not refined sugar) or into syrup, the provisions of subsection (a) shall not apply to his employees in any place of employment where he is so engaged; and in the case of an employer engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables, or in the first processing, within the area of production (as defined by the Administrator), of any agricultural or horticultural commodity during seasonal operations, or in handling, slaughtering, or dressing poultry or livestock, the provisions of subsection (a), during a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, shall not apply to his employees in any place of employment where he is so engaged.

(d) This section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of this Act.

WAGE ORDERS

SEC. 8. (a) With a view to carrying out the policy of this Act by reaching, as rapidly as is economically feasible without substantially curtailing employment, the objective of a universal minimum wage of 40 cents an hour in each industry engaged in commerce or in the production of goods for commerce, the Administrator shall from

time to time convene the industry committee for each such industry, and the industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 6 by employers engaged in commerce or in the production of goods for commerce in such industry or classifications therein.

(b) Upon the convening of an industry committee, the Administrator shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, may hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this Act. The committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry.

(c) The industry committee for any industry shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of 40 cents an hour) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classifications should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classification shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee and the Administrator shall consider among other relevant factors the following:

(1) competitive conditions as affected by transportation, living, and production costs;

(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum-wage standards in the industry.

No classification shall be made under this section on the basis of age or sex.

(d) The industry committee shall file with the Administrator a report containing its recommendations with respect to the matters referred to it. Upon the filing of such report, the Administrator, after due notice to interested persons, and giving them an opportunity to be heard, shall by order approve and carry into effect the recommendations contained in such report, if he finds that the recommendations are made in accordance with law, are supported by the evidence adduced at the hearing, and, taking into consideration the same factors as are required to be considered by the industry committee, will carry out the purposes of this section; otherwise he shall disapprove such

recommendations. If the Administrator disapproves such recommendations, he shall again refer the matter to such committee, or to another industry committee for such industry (which he may appoint for such purpose), for further consideration and recommendations.

(e) No order issued under this section with respect to any industry prior to the expiration of seven years from the effective date of section 6 shall remain in effect after such expiration, and no order shall be issued under this section with respect to any industry on or after such expiration, unless the industry committee by a preponderance of the evidence before it recommends, and the Administrator by a preponderance of the evidence adduced at the hearing finds, that the continued effectiveness or the issuance of the order, as the case may be, is necessary in order to prevent substantial curtailment of employment in the industry.

(f) Orders issued under this section shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the Administrator finds necessary to carry out the purposes of such orders, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established therein. No such order shall take effect until after due notice is given of the issuance thereof by publication in the Federal Register and by such other means as the Administrator deems reasonably calculated to give to interested persons general notice of such issuance.

(g) Due notice of any hearing provided for in this section shall be given by publication in the Federal Register and by such other means as the Administrator deems reasonably calculated to give general notice to interested persons.

ATTENDANCE OF WITNESSES

SEC. 9. For the purpose of any hearing or investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U. S. C., 1934 edition, title 15, secs. 49 and 50), are hereby made applicable to the jurisdiction, powers, and duties of the Administrator, the Chief of the Children's Bureau, and the industry committees.

COURT REVIEW

SEC. 10. (a) Any person aggrieved by an order of the Administrator issued under section 8 may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Administrator be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon the Administrator, and thereupon the Administrator shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part, so far as it is applicable to the

petitioner. The review by the court shall be limited to questions of law, and findings of fact by the Administrator when supported by substantial evidence shall be conclusive. No objection to the order of the Administrator shall be considered by the court unless such objection shall have been urged before the Administrator or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Administrator may modify his findings by reason of the additional evidence so taken, and shall file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Administrator's order. The court shall not grant any stay of the order unless the person complaining of such order shall file in court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect.

INVESTIGATIONS, INSPECTIONS, AND RECORDS

SEC. 11. (a) The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this Act, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of the provisions of this Act. Except as provided in section 12 and in subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 12, the Administrator shall bring all actions under section 17 to restrain violations of this Act.

(b) With the consent and cooperation of State agencies charged with the administration of State labor laws, the Administrator and the Chief of the Children's Bureau may, for the purpose of carrying out their respective functions and duties under this Act, utilize

the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Every employer subject to any provision of this Act or of any order issued under this Act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder.

CHILD LABOR PROVISIONS

SEC. 12. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, no producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

(b) The Chief of the Children's Bureau in the Department of Labor, or any of his authorized representatives, shall make all investigations and inspections under section 11 (a) with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under section 17 to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of this Act relating to oppressive child labor.

EXEMPTIONS

SEC. 13. (a) The provisions of sections 6 and 7 shall not apply with respect to (1) any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator); or (2) any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce; or (3) any employee employed as a seaman; or (4) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act; or (5) any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including the going to and returning from work and including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing, marketing, freezing, canning, curing, storing, or distributing the above products or

byproducts thereof; or (6) any employee employed in agriculture; or (7) any employee to the extent that such employee is exempted by regulations or orders of the Administrator issued under section 14; or (8) any employee employed in connection with the publication of any weekly or semiweekly newspaper with a circulation of less than three thousand the major part of which circulation is within the county where printed and published; or (9) any employee of a street, suburban, or interurban electric railway, or local trolley or motor bus carrier, not included in other exemptions contained in this section; or (10) to any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products; or (11) any switchboard operator employed in a public telephone exchange which has less than five hundred stations.[1]

(b) The provisions of section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act.

(c) The provisions of section 12 relating to child labor shall not apply with respect to any employee employed in agriculture while not legally required to attend school, or to any child employed as an actor in motion pictures or theatrical productions.

LEARNERS, APPRENTICES, AND HANDICAPPED WORKERS

SEC. 14. The Administrator, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for (1) the employment of learners, of apprentices, and of messengers employed exclusively in delivering letters and messages, under special certificates issued pursuant to regulations of the Administrator, at such wages lower than the minimum wage applicable under section 6 and subject to such limitations as to time, number, proportion, and length of service as the Administrator shall prescribe, and (2) the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, under special certificates issued by the Administrator, at such wages lower than the minimum wage applicable under section 6 and for such period as shall be fixed in such certificates.

PROHIBITED ACTS

SEC. 15. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any

[1] Amendment provided by Act of August 9, 1939 (Public No. 344, 76th Congress, 53 Stat. 1266).

goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Administrator issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation;

(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Administrator issued under section 14;

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee.

(4) to violate any of the provisions of section 12;

(5) to violate any of the provisions of section 11 (c), or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

(b) For the purposes of subsection (a) (1) proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.

PENALTIES

SEC. 16. (a) Any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The count in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

INJUNCTION PROCEEDINGS

SEC. 17. The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 20 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U. S. C., 1934 edition, title 28, sec. 381), to restrain violations of section 15.

RELATION TO OTHER LAWS

SEC. 18. No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act or a maximum workweek lower than the maximum workweek established under this Act, and no provision of this Act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act. No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.

SEPARABILITY OF PROVISIONS

SEC. 19. If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Approved, June 25, 1938.

[PUBLIC LAW 283—77TH CONGRESS]

[CHAPTER 461—1ST SESSION]

[S. 1713]

AN ACT

To amend Public Law Numbered 718, Seventy-fifth Congress, approved June 25, 1938.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (2) of subsection (b) of section 7 of Public Law Numbered 718, Seventy-fifth Congress, approved June 25, 1938, is hereby amended to read as follows:

"(2) on an annual basis in pursuance of an agreement with his employer, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that the employee shall not be employed more than two thousand and eighty hours during any period of fifty-two consecutive weeks, or".

Approved, October 29, 1941.